

AMENDED IN SENATE AUGUST 31, 2015

AMENDED IN SENATE JULY 7, 2015

AMENDED IN ASSEMBLY JUNE 1, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1354**

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**Introduced by Assembly Member Dodd**

**(Coauthors: Assembly Members Bonilla, Bonta, Chávez, Cooper,  
Eggman, Cristina Garcia, Gonzalez, and Lopez)**

**(Coauthors: Senators Allen, Block, Galgiani, *Hall*, Hancock, Leyva,  
Mitchell, and Wolk)**

February 27, 2015

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An act to amend Section 12990 of the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1354, as amended, Dodd. Discrimination: equal pay: state contracting.

Existing law subjects an employer who is, or wishes to become, a contractor with the state for public works, or for goods or services, to various nondiscrimination requirements. Existing law authorizes requiring an employer to submit a nondiscrimination program to the Department of Fair Employment and Housing for approval and certification, prior to becoming a contractor or subcontractor with the state, as well as requiring the provision of periodic reports of contractor or subcontractor compliance with that program.

This bill would enact the Equal Pay for Equal Work Act of 2015. The bill would require an employer with 100 or more ~~employees~~, *employees* *and a contract of 30 days or more*, prior to becoming a contractor or

subcontractor with the state, to submit a nondiscrimination program to the Department of Fair Employment and Housing and to submit periodic reports no more than annually of its compliance with that program. The bill would authorize the department to require approval and certification of the program. The bill would permit the department to require an employer with fewer than 100 employees *or a contract of less than 30 days* to submit a nondiscrimination report. The bill would require the department to define an employee for these purposes. The bill would require the nondiscrimination program to include policies and procedures designed to ensure equal employment opportunities for all applicants and employees, an analysis of employment selection procedures, and a ~~work force~~ *workforce* analysis, as specified. *The bill would specify that its provisions are not to be construed to negate certain exemptions established by regulation that predate its enactment or to require the department to reevaluate the validity of these exemptions, as specified.* The bill would make a statement of legislative findings.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Equal Pay for Equal Work Act of 2015.
- 3 SEC. 2. (a) The Legislature finds and declares the following:
- 4 (1) According to data from the United States Census Bureau,
- 5 full-time working women, on average, over the last decade, have
- 6 continued to earn just 77 cents for every dollar a man earns. The
- 7 wage gap is greater for women of color, with African American
- 8 women being paid an average of 64 cents for every dollar paid to
- 9 white, non-Hispanic men in 2013 and Latinas being paid just 56
- 10 cents for every dollar paid to white, non-Hispanic men.
- 11 (2) This wage disparity amounted to a yearly average wage gap
- 12 of \$10,876 in 2013 between full-time working men and full-time
- 13 working women. In total, the disparity represents more than \$490
- 14 billion in lost wages for working women every year.
- 15 (3) Disparities in pay for women have numerous negative
- 16 impacts. This pay differential shortchanges women and their
- 17 families by thousands of dollars a year and potentially hundreds
- 18 of thousands of dollars over a lifetime. Nearly 4 in 10 mothers are
- 19 primary breadwinners in their households, and nearly two-thirds

1 are significant earners, making pay equity critical to the economic  
2 security of their families.

3 (4) Equal pay for equal work is a fundamental precept in our  
4 nation and in California. Federal law, including the federal Equal  
5 Pay Act of 1963 (Public Law 88-38), Title VII of the Civil Rights  
6 Act of 1964 (Public Law 88-352), and Executive Order 11246 of  
7 September 24, 1965, entitled Equal Employment Opportunity,  
8 specifically prohibits arbitrarily compensating men and women  
9 differently for the same work, as does California's Equal Pay Act.

10 (5) On August 6, 2014, the United States Department of Labor's  
11 Office of Federal Contract Compliance Programs issued a notice  
12 of proposed rulemaking to required covered federal contractors  
13 and subcontractors with more than 100 employees to submit an  
14 annual equal pay report on employee compensation. In California,  
15 state contractors receiving public money are obligated to comply  
16 with equal pay laws and should provide the state with aggregate  
17 wage data to advance pay equity.

18 (b) It is the intent of the Legislature in enacting this act to  
19 promote pay equity and nondiscrimination in setting pay and  
20 making hiring or promotional decisions, and to obtain better data  
21 on pay equity to more wholly address the problem.

22 SEC. 3. Section 12990 of the Government Code is amended  
23 to read:

24 12990. (a) Any employer who is, or wishes to become, a  
25 contractor with the state for public works or for goods or services  
26 is subject to the provisions of this part relating to discrimination  
27 in employment and to the nondiscrimination requirements of this  
28 section and any rules and regulations that implement it.

29 (b) (1) (A) Prior to becoming a contractor or subcontractor  
30 with the state, an employer with 100 or more employees *and a*  
31 *contract of 30 days or more* shall submit a nondiscrimination  
32 program to the department and shall submit periodic reports, no  
33 more than annually, of its compliance with that program. An  
34 employer with fewer than 100 employees *or a contract of less than*  
35 *30 days* may be required to submit a nondiscrimination program  
36 and, if so required, shall comply with the requirements for  
37 employers with 100 or more employees. The department may  
38 require approval and certification of a nondiscrimination program.  
39 The department shall define an employee for the purposes of this  
40 paragraph.

1     (B) *The changes made to this subdivision made by the act adding*  
2 *this subparagraph shall not be construed to negate an exemption*  
3 *to the requirements of this section in existence on January 1, 2016,*  
4 *created by the department through the exercise of its regulatory*  
5 *authority, or to otherwise require the department to reinterpret*  
6 *the validity of an exemption as a result of these changes.*

7     (2) A nondiscrimination program shall include policies and  
8 procedures designed to ensure equal employment opportunities  
9 for all applicants and employees, an analysis of employment  
10 selection procedures, and a ~~work force~~ *workforce* analysis. The  
11 ~~work force~~ *workforce* analysis shall include the following:

12     (A) ~~An equal pay report that includes the~~ *The* total number of  
13 workers with a specific job category identified by worker race,  
14 ethnicity, and ~~gender~~ *sex*.

15     (B) Total wages required to be reported on Internal Revenue  
16 Service Form W-2 for all workers in a specific job category  
17 identified by worker race, ethnicity, and ~~gender~~ *sex*.

18     (C) The total hours worked on an annual basis for all workers  
19 in a specific job category identified by worker race, ethnicity, and  
20 ~~gender~~ *sex*. Exempt employees shall be presumed to work 40  
21 hours a week for purposes of this reporting requirement.

22     (c) Every state contract and subcontract for public works or for  
23 goods or services shall contain a nondiscrimination clause  
24 prohibiting discrimination on the bases enumerated in this part by  
25 contractors or subcontractors. The nondiscrimination clause shall  
26 contain a provision requiring contractors and subcontractors to  
27 give written notice of their obligations under that clause to labor  
28 organizations with which they have a collective bargaining or other  
29 agreement. These contractual provisions shall be fully and  
30 effectively enforced. This subdivision does not apply to a credit  
31 card purchase of goods of two thousand five hundred dollars  
32 (\$2,500) or less. The total amount of exemption authorized herein  
33 shall not exceed seven thousand five hundred dollars (\$7,500) per  
34 year for each company from which a state agency is purchasing  
35 goods by credit card. It shall be the responsibility of each state  
36 agency to monitor the use of this exemption and adhere to these  
37 restrictions on these purchases.

38     (d) The department shall periodically develop rules and  
39 regulations for the application and implementation of this section,  
40 and submit them to the council for consideration and adoption in

1 accordance with the provisions of Chapter 3.5 (commencing with  
2 Section 11340) of Part 1. Those rules and regulations shall describe  
3 and include, but not be limited to, all of the following:

4 (1) Procedures for the investigation, approval, certification,  
5 decertification, monitoring, and enforcement of nondiscrimination  
6 programs.

7 (2) The size of contracts or subcontracts below which any  
8 particular provision of this section shall not apply.

9 (3) The circumstances, if any, under which a contractor or  
10 subcontractor is not subject to this section.

11 (4) Criteria for determining the appropriate plant, region,  
12 division, or other unit of a contractor's or subcontractor's operation  
13 for which a nondiscrimination program is required.

14 (5) Procedures for coordinating the nondiscrimination  
15 requirements of this section and its implementing rules and  
16 regulations with the California Plan for Equal Opportunity in  
17 Apprenticeship, with the provisions and implementing regulations  
18 of Article 9.5 (commencing with Section 11135) of Chapter 1 of  
19 Part 1, and with comparable federal laws and regulations  
20 concerning nondiscrimination, equal employment opportunity,  
21 and affirmative action by those who contract with the United States.

22 (6) The basic principles and standards to guide the department  
23 in administering and implementing this section.

24 (e) Where a contractor or subcontractor is required to prepare  
25 an affirmative action, equal employment, or nondiscrimination  
26 program subject to review and approval by a federal compliance  
27 agency, that program may be filed with the department, instead of  
28 any nondiscrimination program regularly required by this section  
29 or its implementing rules and regulations. Such a program shall  
30 constitute a prima facie demonstration of compliance with this  
31 section. Where the department or a federal compliance agency has  
32 required the preparation of an affirmative action, equal  
33 employment, or nondiscrimination program subject to review and  
34 approval by the department or a federal compliance agency,  
35 evidence of such a program shall also constitute prima facie  
36 compliance with an ordinance or regulation of any city, city and  
37 county, or county that requires an employer to submit such a  
38 program to a local awarding agency for its approval prior to  
39 becoming a contractor or subcontractor with that agency.

1 (f) Where the department determines and certifies that the  
2 provisions of this section or its implementing rules and regulations  
3 are violated or determines a contractor or subcontractor is engaging  
4 in practices made unlawful under this part, the department may  
5 recommend appropriate sanctions to the awarding agency. Any  
6 such recommendation shall take into account the severity of the  
7 violation or violations and any other penalties, sanctions, or  
8 remedies previously imposed.

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